

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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ALL Districts

The Texas Transportation Commission (commission) finds it necessary to adopt new §§15.140 – 15.147 relating to State Scenic Byways Program to be codified under Title 43, Texas Administrative Code, Part 1.

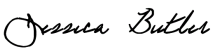
The preamble and the adopted new sections, attached to this minute order as Exhibits A and B, are incorporated by reference as though set forth verbatim in this minute order, except that they are subject to technical corrections and revisions, approved by the general counsel, necessary for compliance with state or federal law or for acceptance by the Secretary of State for filing and publication in the *Texas Register*.

IT IS THEREFORE ORDERED by the commission that new §§15.140 – 15.147 are adopted and are authorized for filing with the Office of Secretary of State.

The executive director is directed to take the necessary steps to implement the actions as ordered in this minute order, pursuant to the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Submitted and reviewed by:

Recommended by:

DocuSigned by:

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Director, Transportation Planning and
Programming Division

DocuSigned by:

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Executive Director

116153 November 30, 2021

Minute Number	Date Passed
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Adoption Preamble

The Texas Department of Transportation (department) adopts new §§15.140 - 15.147 concerning State Scenic Byways Program. The new §§15.140 - 15.147 are adopted with changes to the proposed text as published in the September 17, 2021 issue of the *Texas Register* (46 TexReg 6232) and will be republished.

EXPLANATION OF ADOPTED NEW SECTIONS AND AMENDMENTS

Senate Bill No. 941, 87th Legislature, Regular Session, 2021, (SB 941) amended Transportation Code, Chapter 391, for the department to create plan, design, and establish a program for designating highways as State Scenic Byways. New §§15.140 - 15.147 add provisions to Title 43, Chapter 15 that set forth how the department will implement the program.

The rules were written in a manner to provide the department with maximum flexibility due to the uncertainty surrounding the federal program. For example, at this time, the Federal Highway Administration (FHWA) has no plans to conduct a National Byway Designation call; however, a project call for the National Scenic Grants program is planned for later this fall, but neither program guidance nor an anticipated date for the call is available at this time. The department is required by statute to create the State Scenic Byway program by the end of 2021.

1 New §15.140, Purpose, describes the purpose of the new
2 subchapter.

3
4 New §15.141 Definitions, supplies relevant definitions for the
5 subchapter.

6
7 New §15.142, State Scenic Byway Program, states that the state
8 program works in conjunction with the National Scenic Byways
9 Program and establishes the requirements for a highway to be
10 designated as a State Scenic Byway.

11
12 New §15.143, Eligible Entity, provides that any political
13 subdivision is an eligible entity and that a community group may
14 be approved by the department to be an eligible entity. The
15 section also provides the procedure for a community group to be
16 approved as an eligible entity.

17
18 New §15.144, Application Procedure, describes the application
19 procedure for an entity to request the designation of a highway
20 as a State Scenic Byway, the designation of a State Scenic Byway
21 as a National Scenic Byway, and an application for a national
22 scenic byway grant for a project on a State Scenic Byway.

23
24 New §15.145, Matching Funds, describes the matching fund
25 provisions under the program and states the statutory limitation

on the department's use of state funds. The section restates the substance of Transportation Code, §391.256(b)(3) and (d).

New §15.146, Outdoor Advertising Prohibited, states that outdoor advertising on a State Scenic Byway is generally prohibited.

This prohibition is required under Transportation Code, §391.252. Technical corrections of the citations to the state and federal law have been made to this section, as proposed, to provide greater specificity of the applicable law.

New §15.147, Removal of Designation, authorizes the department to remove the designation of a State Scenic Byway if the roadway no longer meets the requirements under Title 23, United States Code, §162.

COMMENTS

The department received a total of 72 comments concerning the proposed draft rules. Comments were received from Scenic Texas, the Outdoor Advertising Association of Texas (OAAT), and the National Parks Conservation Association. Sixty nine of the comments were from private citizens in support of comments made by Scenic Texas.

Comment: OAAT commented on §15.142 that the rule does not properly designate criteria for becoming a state scenic byway as intended by the Legislature.

1

2 Response: The department disagrees. The proposed rules state 23
3 U.S.C. §162 is the guide for the State Scenic Byway Program. The
4 intrinsic qualities as mentioned in the federal statute will be
5 considered as part of the department's review process. The
6 program documents will detail all of the designation
7 requirements.

8

9 Comment: Scenic Texas commented on §15.143 that community groups
10 should be broadly defined so that a broad range of groups would
11 be eligible to apply.

12

13 Response: The department agrees in part and includes broad
14 requirements for community group eligibility to ensure a wide
15 variety of entities can participate. However, the department
16 will not define specific criteria in the rules but rather in its
17 program guidance and application form.

18

19 Comment: OAAT commented that a 60-day deadline for the
20 department to process applications from community groups does
21 not allow enough time to adequately process the application.

22

23 Response: The department agrees and revised the wording to
24 clarify that the 60-day deadline was intended only to review
25 whether a community group is eligible to submit an application.

26

1 Comment: Scenic Texas commented on §15.144 that a corridor
2 management plan (CMP) should not be required. OAAT commented
3 that the department should require a CMP for state designation.
4

5 Response: The department agrees in part. The proposed rules were
6 drafted to provide the department with discretion regarding the
7 requirement for the CMP and inform potential applicants of the
8 corridor management plan requirement under the National
9 Designation Program. However, in response to Scenic Texas'
10 comments, the last sentence of §15.144(a) is removed and the
11 section no longer states that a CMP could be required as part of
12 a State Scenic Designation application. However, per FHWA
13 requirements, the applicant will likely still have to submit a
14 CMP as part of a National Designation application. Moreover, the
15 CMP is required by FHWA only for the National Designation
16 application. Also, the federal grant under the National Scenic
17 Byway Program can be used to create the CMP. The proposed rules
18 require that each affected local governmental entity must
19 approve of the designation as part of the State Scenic Byway
20 application. This requirement ensures that the public and
21 impacted landowners are aware of the designation. The impacted
22 landowners will be able to voice their concerns to their local
23 government officials.
24

25 Comment: Scenic Texas commented that the requirement for
26 concurrence in §15.144 should be removed.

1

2 Response: The department disagrees. This requirement was added
3 to ensure that local governments are aware and approve of the
4 designation. This requirement is consistent with the
5 department's goal of working closely with various planning
6 partners to ensure coordination. Moreover, the department's
7 Memorial Highway Guidelines also require that a group seeking to
8 designate a portion of a highway must obtain a supporting
9 authorizing resolution or municipal ordinance. The department's
10 staff recommends language remain as proposed.

11

12 Comment: Scenic Texas commented in §15.144 that an eligible
13 entity should be allowed to submit an application for either
14 National Scenic Byway Designation or funding but not required to
15 submit both.

16

17 Response: The department agrees and revised the wording to make
18 this clear. After §15.144(c)(1), the department has replaced
19 "and" with "or" for clarification. The department understands
20 the language can be interpreted to mean both applications for a
21 grant and national designation must be submitted together. The
22 intent was to state that eligible entity could submit an
23 application for either a grant or national designation.

24

25 Comments: Scenic Texas commented in §15.147 that the department
26 should "clearly state the federal criteria for de-designation in

1 the rules so that they can be found easily by stakeholders." If
2 not, Scenic Texas requests that the department include "a list
3 of reasons a particular roadway may be de-designated." OAAT
4 also commented on that "with no criteria to include a road as a
5 state scenic byway, the method for the removal of the
6 designation is also unclear."

7
8 Response: The department disagrees and believes that the
9 language provides sufficient explanation. The program guidance
10 and application form will detail the criteria and processes for
11 both for designation and de-designation.

12
13 Comment: Scenic Texas commented that the department should keep
14 an internal list of applications denied by the department with
15 reasons for denial to be used to help expand the list of
16 eligible roadways.

17
18 Response: The department disagrees, the bill language is clear
19 as to what roadways are eligible. The department's staff
20 respectfully declines this suggestion because doing so could
21 suggest that the department is interested in expanding the list
22 of eligible roadways. The expansion of the list of eligible
23 roadways is a legislative matter.

24
25 STATUTORY AUTHORITY

1 The new sections are adopted under Transportation Code,
2 §201.101, which provides the Texas Transportation Commission
3 (commission) with the authority to establish rules for the
4 conduct of the work of the department, and more specifically,
5 Transportation Code, §391.256(f), which requires the commission
6 by rule to prohibit outdoor advertising on a State Scenic Byway.

7

8 CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

9 Transportation Code, §391.256.

SUBCHAPTER L. STATE SCENIC BYWAYS PROGRAM

§15.140. Purpose. Transportation Code, Chapter 391, Subchapter I, requires the department to establish a State Scenic Byways Program. This subchapter sets forth the procedures for the program.

§15.141. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Department--The Texas Department of Transportation.

(2) National Scenic Byway--A roadway designated as a National Scenic Byway by the Federal Highway Administration under Title 23, §162, United States Code.

§15.142. State Scenic Byways Program.

(a) The State Scenic Byways Program works in conjunction with the national scenic byways program, 23 U.S.C. §162 and guidance for that program from the federal highway administration.

(b) To be a State Scenic Byway, a highway must be described by Transportation Code, §391.252, and designated by the department as a State Scenic Byway under this subchapter.

§15.143. Eligible Entity.

(a) To be eligible to participate in the State Scenic Byways Program, an entity must be:

- (1) a political subdivision; or
- (2) a community group that is approved by the department.

(b) To be approved for participation in the program, a community group must submit to the department:

- (1) an application in the form prescribed by the department; and
- (2) information supporting the application, as required by the department.

(c) The department will send to a community group that applies under subsection (b) of this section notice of the approval or rejection of its application for participation in the program before the 60th day after the day on which that application and all required information is first received by the department.

§15.144. Scenic Byways Application Procedures.

(a) State Scenic Byways Application. An eligible entity may submit to the department an application for the designation of a highway as a State Scenic Byway in the form prescribed by the department.

(b) Concurrence. Before the department may designate a highway as a State Scenic Byway, the applicant must obtain

1 concurrence from each governmental entity that has jurisdiction
2 over the highway that is subject to the application.

3 (c) National Scenic Byway Applications. Subject to Federal
4 Highway Administration notice and after a highway is designated
5 as a State Scenic Byway, an eligible entity may submit to the
6 department:

7 (1) an application for designation of the State Scenic
8 Byway as a National Scenic Byway; or

9 (2) an application for a National Scenic Byway grant
10 for a project on the State Scenic Byway.

11
12 §15.145. Matching Funds. An eligible entity under the program
13 may pay for the costs of a project that are not covered by a
14 grant made under 23 U.S.C. §162. The department may use money
15 from the state highway fund for a project that receives a grant
16 made under 23 U.S.C. §162 only to satisfy the state matching
17 fund requirements for the grant.

18
19 §15.146. Outdoor Advertising Prohibited. In accordance with
20 §21.145 of this title (relating to Prohibited Signs),
21 Transportation Code, §391.252, and 23 U.S.C. §131(s), outdoor
22 advertising on a State Scenic Byway is prohibited.

23
24 §15.147. Removal of Designation. The department may remove a
25 State Scenic Byway designation if the department determines that

- 1 the highway no longer meets the criteria for designation under
- 2 the national scenic byways program provided by 23 U.S.C. §162.